

AMENDED IN SENATE JUNE 3, 2014

AMENDED IN SENATE MAY 28, 2014

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 1438

Introduced by Assembly Member Linder
(Coauthors: Assembly Members Allen, Olsen, Patterson, and
Waldron)
(Coauthor: Senator Vidak)

January 6, 2014

An act to amend Sections 290.5, 3000.1, and 4852.01 of the Penal Code, relating to sex offenders.

LEGISLATIVE COUNSEL'S DIGEST

AB 1438, as amended, Linder. Sex offenders: certificates of rehabilitation.

(1) Existing law requires a person who has been convicted of specified sex offenses to register with local law enforcement authorities as a sex offender. Existing law authorizes a person convicted of a felony or a misdemeanor violation of certain sex offenses, the accusatory pleading of which has been dismissed, to file a petition for a certificate of rehabilitation and pardon provided that the petitioner has not been incarcerated since the dismissal of the accusatory pleading, is not on probation for the commission of another felony, and presents satisfactory evidence of 5 years residence in this state prior to the filing of the petition. Under existing law, a petition for a certificate of rehabilitation and pardon does not apply to a person who, among other specified crimes, has been convicted of willfully and lewdly committing any lewd and lascivious act upon the body of a child who is under the age of 14.

Under existing law, a person convicted of certain sex offenses is not, upon obtaining a certificate of rehabilitation, relieved of his or her duty to register as a sex offender.

This bill, in addition, would make the provisions for obtaining a certificate of rehabilitation inapplicable to a person who is convicted of engaging in sexual intercourse, sodomy, oral copulation, or sexual penetration with a child who is 10 years of age or younger and would provide that such a person who has obtained a certificate of rehabilitation is not relieved of his or her duty to register as a sex offender. *The bill would also make the provisions for obtaining a certificate of rehabilitation inapplicable to a person who is convicted of aggravated sexual assault of a child.*

Because certain sex offenders would be precluded from being relieved of the duty to register with local officials, the bill would impose a state-mandated local program.

(2) Existing law requires the period of parole for an inmate sentenced to a life term for aggravated sexual assault of a child and for engaging in sexual intercourse, sodomy, oral copulation, or sexual penetration with a child who is 10 years of age or younger to be for the remainder of the inmate's life.

This bill would instead impose lifetime parole on a person convicted of either of the above offenses.

(a) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 290.5 of the Penal Code is amended to
- 2 read:
- 3 290.5. (a) (1) A person required to register under Section 290
- 4 for an offense not listed in paragraph (2), upon obtaining a
- 5 certificate of rehabilitation under Chapter 3.5 (commencing with
- 6 Section 4852.01) of Title 6 of Part 3, shall be relieved of any
- 7 further duty to register under Section 290 if he or she is not in
- 8 custody, on parole, or on probation.

1 (2) A person required to register under Section 290, upon
2 obtaining a certificate of rehabilitation under Chapter 3.5
3 (commencing with Section 4852.01) of Title 6 of Part 3, shall not
4 be relieved of the duty to register under Section 290, or of the duty
5 to register under Section 290 for any offense subject to that section
6 of which he or she is convicted in the future, if his or her conviction
7 is for one of the following offenses:

8 (A) Section 207 or 209 committed with the intent to violate
9 Section 261, 286, 288, 288a, or 289.

10 (B) Section 220, except assault to commit mayhem.

11 (C) Section 243.4, provided that the offense is a felony.

12 (D) Paragraph (1), (2), (3), (4), or (6) of subdivision (a) of
13 Section 261.

14 (E) Section 264.1.

15 (F) Section 266, provided that the offense is a felony.

16 (G) Section 266c, provided that the offense is a felony.

17 (H) Section 266j.

18 (I) Section 267.

19 (J) Section 269.

20 (K) Paragraph (1) of subdivision (b) of Section 286, provided
21 that the offense is a felony.

22 (L) Paragraph (2) of subdivision (b) of, or subdivision (c), (d),
23 (f), (g), (i), (j), or (k) of, Section 286.

24 (M) Section 288.

25 (N) Paragraph (1) of subdivision (b) of Section 288a, provided
26 that the offense is a felony.

27 (O) Paragraph (2) of subdivision (b) of, or subdivision (c), (d),
28 (f), (g), (i), (j), or (k) of, Section 288a.

29 (P) Section 288.5.

30 (Q) Section 288.7.

31 (R) Subdivision (a), (b), (d), (e), (f), (g), or (h) of Section 289,
32 provided that the offense is a felony.

33 (S) Subdivision (i) or (j) of Section 289.

34 (T) Section 647.6.

35 (U) The attempted commission of any of the offenses specified
36 in this paragraph.

37 (V) The statutory predecessor of any of the offenses specified
38 in this paragraph.

1 (W) Any offense which, if committed or attempted in this state,
2 would have been punishable as one or more of the offenses
3 specified in this paragraph.

4 (b) (1) Except as provided in paragraphs (2) and (3), a person
5 described in paragraph (2) of subdivision (a) shall not be relieved
6 of the duty to register until that person has obtained a full pardon
7 as provided in Chapter 1 (commencing with Section 4800) or
8 Chapter 3 (commencing with Section 4850) of Title 6 of Part 3.

9 (2) This subdivision does not apply to misdemeanor violations
10 of Section 647.6.

11 (3) The court, upon granting a petition for a certificate of
12 rehabilitation pursuant to Chapter 3.5 (commencing with Section
13 4852.01) of Title 6 of Part 3, if the petition was granted prior to
14 January 1, 1998, may relieve a person of the duty to register under
15 Section 290 for a violation of Section 288 or 288.5, provided that
16 the person was granted probation pursuant to subdivision (d) of
17 Section 1203.066, has complied with the provisions of Section
18 290 for a continuous period of at least 10 years immediately
19 preceding the filing of the petition, and has not been convicted of
20 a felony during that period.

21 SEC. 2. Section 3000.1 of the Penal Code is amended to read:

22 3000.1. (a) (1) In the case of any inmate sentenced under
23 Section 1168 for any offense of first or second degree murder with
24 a maximum term of life imprisonment, the period of parole, if
25 parole is granted, shall be the remainder of the inmate's life.

26 (2) Notwithstanding any other law, in the case of any inmate
27 sentenced to a life term under subdivision (b) of Section 209, if
28 that offense was committed with the intent to commit a specified
29 sexual offense, Section 269 or 288.7, subdivision (c) of Section
30 667.51, Section 667.71 in which one or more of the victims of the
31 offense was a child under 14 years of age, or subdivision (j), (l),
32 or (m) of Section 667.61, the period of parole, if parole is granted,
33 shall be the remainder of the inmate's life.

34 (b) Notwithstanding any other law, when any person referred
35 to in paragraph (1) of subdivision (a) has been released on parole
36 from the state prison, and has been on parole continuously for
37 seven years in the case of any person imprisoned for first degree
38 murder, and five years in the case of any person imprisoned for
39 second degree murder, since release from confinement, the board
40 shall, within 30 days, discharge that person from parole, unless

1 the board, for good cause, determines that the person will be
2 retained on parole. The board shall make a written record of its
3 determination and transmit a copy of it to the parolee.

4 (c) In the event of a retention on parole pursuant to subdivision
5 (b), the parolee shall be entitled to a review by the board each year
6 thereafter.

7 (d) There shall be a hearing as provided in Sections 3041.5 and
8 3041.7 within 12 months of the date of any revocation of parole
9 of a person referred to in subdivision (a) to consider the release of
10 the inmate on parole and, notwithstanding paragraph (3) of
11 subdivision (b) of Section 3041.5, there shall be annual parole
12 consideration hearings thereafter, unless the person is released or
13 otherwise ineligible for parole release. The panel or board shall
14 release the person within one year of the date of the revocation
15 unless it determines that the circumstances and gravity of the parole
16 violation are such that consideration of the public safety requires
17 a more lengthy period of incarceration or unless there is a new
18 prison commitment following a conviction.

19 (e) The provisions of Section 3042 shall not apply to any hearing
20 held pursuant to this section.

21 SEC. 3. Section 4852.01 of the Penal Code is amended to read:

22 4852.01. (a) Any person convicted of a felony who has been
23 released from a state prison or other state penal institution or
24 agency in California, whether discharged on completion of the
25 term for which he or she was sentenced or released on parole prior
26 to May 13, 1943, who has not been incarcerated in a state prison
27 or other state penal institution or agency since his or her release,
28 and who presents satisfactory evidence of a three-year residence
29 in this state immediately prior to the filing of the petition for a
30 certificate of rehabilitation and pardon provided for by this chapter,
31 may file the petition pursuant to the provisions of this chapter.

32 (b) Any person convicted of a felony who, on May 13, 1943,
33 was confined in a state prison or other institution or agency to
34 which he or she was committed and any person convicted of a
35 felony after that date who is committed to a state prison or other
36 institution or agency may file a petition for a certificate of
37 rehabilitation and pardon pursuant to the provisions of this chapter.

38 (c) Any person convicted of a felony or any person who is
39 convicted of a misdemeanor violation of any sex offense specified
40 in Section 290, the accusatory pleading of which has been

1 dismissed pursuant to Section 1203.4, may file a petition for
2 certificate of rehabilitation and pardon pursuant to the provisions
3 of this chapter if the petitioner has not been incarcerated in any
4 prison, jail, detention facility, or other penal institution or agency
5 since the dismissal of the accusatory pleading and is not on
6 probation for the commission of any other felony, and the petitioner
7 presents satisfactory evidence of five years residence in this state
8 prior to the filing of the petition.

9 (d) This chapter shall not apply to persons serving a mandatory
10 life parole, persons committed under death sentences, persons
11 convicted of a violation of *Section 269*, subdivision (c) of Section
12 286, Section 288, subdivision (c) of Section 288a, Section 288.5,
13 Section 288.7, or subdivision (j) of Section 289, or persons in
14 military service.

15 (e) Notwithstanding any other law, the Governor has the right
16 to pardon a person convicted of a violation of *Section 269*,
17 subdivision (c) of Section 286, Section 288, subdivision (c) of
18 Section 288a, Section 288.5, Section 288.7, or subdivision (j) of
19 Section 289, if there are extraordinary circumstances.

20 SEC. 4. No reimbursement is required by this act pursuant to
21 Section 6 of Article XIII B of the California Constitution because
22 the only costs that may be incurred by a local agency or school
23 district will be incurred because this act creates a new crime or
24 infraction, eliminates a crime or infraction, or changes the penalty
25 for a crime or infraction, within the meaning of Section 17556 of
26 the Government Code, or changes the definition of a crime within
27 the meaning of Section 6 of Article XIII B of the California
28 Constitution.